

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Susanna Colon and Saheem Richard Gil,
Administrators of the Estate of Saheem R. Gil, Jr.,
and Susanna Colon and Saheem Richard Gil, in
their own right,
47a East Cherry Street,
Palmyra, PA 17078

Plaintiffs

v.

United States of America
and Hamilton Health Center, Inc.
110 S. 17th Street,
Harrisburg, PA 17104

Defendants.

CIVIL ACTION

NO. 1:21-CV-889

FILED
HARRISBURG, PA

MAY 17 2021

PER Dr
DEPUTY CLERK

**ORIGINAL COMPLAINT FOR DAMAGES
UNDER THE FEDERAL TORT CLAIMS ACT**

JURISDICTION & VENUE

1. This action is brought pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671 *et seq.*, against the United States of America and Hamilton Health Center, Inc., which vests exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Court.

2. Venue is proper in the Middle District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b)(1) and/or 1391(b)(2), as well as 28 U.S.C. § 1391(e)(1), because the United States is a defendant and Defendant Hamilton Health Center, Inc. is a corporation that does business in the Middle District of Pennsylvania.

NATURE OF THE ACTION

4. This is a wrongful death and personal injury action arising out of the injury to and

death of Saheem Richard Gil, Jr., on or about October 26, 2018 in Harrisburg, Pennsylvania.

PARTIES TO THE ACTION

5. Plaintiff SUSANNA COLON (hereinafter referred to as "Ms. Colon"), as co-Administrator of the Estate of Saheem Richard Gil, Jr., and in her own right, is the mother of the late Saheem Richard Gil, Jr., and is an adult individual residing at 47a East Cherry Street, Palmyra, Pennsylvania 17078. She is the mother of Saheem Richard Gil, Jr., deceased who is the subject of this lawsuit.

6. Plaintiff SAHEEM RICHARD GIL (hereinafter referred to as "Mr. Gil"), as co-Administrator of the Estate of Saheem Richard Gil, Jr., and in his own right, is the father of the late Saheem Richard Gil, Jr., and is an adult individual residing at 47a East Cherry Street, Palmyra, Pennsylvania 17078. He is the father of Saheem Richard Gil, Jr., deceased, who is the subject of this lawsuit.

7. Plaintiffs' decedent, Saheem Richard Gil, Jr., deceased, was a citizen of the Commonwealth of Pennsylvania.

8. Defendant, HAMILTON HEALTH CENTER, INC., is a medical business and/or professional organization organized and existing under the laws of the Commonwealth of Pennsylvania for the purpose of providing medical treatment and care with its principal place of business located in Dauphin County at 110 S. 17th Street, Harrisburg, PA 17104. The facility and/or organization provides health care services and treatment to patients such as Plaintiffs, Ms. Colon and the decedent, who were, at all times relevant hereto, were under their treatment and care. There is a professional liability claim against this defendant.

9. This suit has been timely filed, in that Plaintiffs timely served notice of their

claims on Hamilton Health Center, Inc.

10. The United States of America is a Defendant as Hamilton Health Center, Inc. has been deemed a federal employee.

EVENTS FORMING THE BASIS OF THE CLAIMS

11. At all times relevant hereto, from April 2018 to the time of the decedent, Saheem Richard Gil, Jr.'s birth, Plaintiff Ms. Colon was seen routinely at the Hamilton Health Center, Inc. for her prenatal care, which was inclusive of physical exams, blood work, genetic testing, diabetic screening and surveillance of her obesity as well as its potential untoward effects on the developing fetus.

12. At all times relevant hereto, Plaintiffs were private pay and/or public insurance beneficiaries. Ms. Colon was classified as a high-risk pregnancy in April 2018. Ms. Colon was referred to Hamilton Health Center to the for maternal fetal prenatal care.

13. At Ms. Colon's medical prenatal visits, genetic studies were planned. Interval growth studies were recommended with noted Body Mass Index screenings and she was assessed by the professional staff as having a first trimester pregnancy.

14. Plaintiff Susanna Colon continued to receive maternal and prenatal care from the Hamilton Health Center, Inc. through their employees, employees, agents, principals, workmen, and/or contractors which included physicians, medical residents, interns, nurses, technicians, mid-wives, medical students, or other persons during the course of her labor.

15. On September 7, 2018, Plaintiff Susanna Colon visited Hamilton Health Center for a 32 week visit.

16. On October 4, 2018, Plaintiff Susanna Colon was seen at the Hamilton Health Center for a 36 week gestation visit. Her problem list included a BMI 35.0-35.9 adult; obesity

complicating pregnancy third trimester; supervision of elderly multigravida, second trimester and uterine size discrepancy, third trimester.

17. On October 4, 2018, a Doppler study was taken and was normal.

18. She was advised to continue her care in the offices of the Hamilton Health Center.

19. On October 4, 2018, an order was issued that Plaintiff was to have a follow up interval growth study and ultrasound in 4 weeks time.

20. However, no additional study was administered to Plaintiff Susanna Colon subsequent to that time and prior to labor on October 25, 2018.

21. On October 15, 2020, Plaintiffs sued Hamilton Health Center, Inc. Defendant in state court for medical malpractice for complications of delivery secondary to a macrosomic infant and misdiagnosis of same related to his birth.

22. The Hamilton Health Center, Inc. Defendant removed the matter to federal court, on January 8, 2021, alleging that Hamilton Health Center's employees were federal employees of a federally-funded health care clinic and, thus, was subject to the exclusive jurisdiction of the federal courts under the Federal Tort Claims Act ("FTCA"), 42 U.S.C. § 233.

23. The removed case was captioned as *Colon v. UMPC Pinnacle Hospitals, et al.*, No. 1:21-cv-00039. The Hamilton Health Defendant filed an Answer to the Complaint, as well as cross-claims against for contribution, common law indemnity, and contractual indemnity.

24. On February 23, 2021, the case was remanded to state court for lack of jurisdiction under 42 U.S.C. § 233(a). See *Colon v. UMPC Pinnacle Hospitals, et al.*, No. 1:21-cv-00039. It was determined that, under § 233(a), the United States, not the Hamilton Health Defendant, had to remove the matter to federal court, but only after issuing the requisite certification. *Id.*

25. On February 23, 2021, the case was remanded to state court for lack of jurisdiction under 42 U.S.C. § 233(a) and the United States was dismissed without prejudice. See *Colon v. UPMC Pinnacle Hospitals*, et al., No. 1:21-cv-00039. (Doc. 14).

FIRST CLAIM – VIOLATION OF 28 U.S.C. §2680

26. Plaintiffs incorporate by reference herein all allegations set forth above.

27. The negligence, carelessness and recklessness of Defendants the United States of America and Hamilton Health, Inc. acting through their actual and/or ostensible agents, servants, and/or employees, consisted of, inter alia, the following:

- a. Failing to appreciate the risks for macrosomia, a nuchal cord, shoulder dystocia, and hypoxemia;
- b. Failing to properly manage and oversee the labor of Susanna Colon and the delivery of Saheem Richard Gil, Jr.
- c. Failing to ensure that the delivering doctors were aware that Saheem Richard Gil, Jr. was large for gestational age;
- d. Failing to document medical and nursing care pursuant to Federal and State laws and regulations and medical and nursing standards of care regarding care to Susanna Colon and Saheem Richard Gil, Jr., deceased;
- e. Failure of Defendant, UPMC Pinnacle System Hospital to maintain nursing competence in obstetrical emergencies;

28. As a direct and proximate result of the negligence, carelessness and recklessness of Defendants, UPMC Pinnacle Hospitals, UPMC Pinnacle System-Harrisburg Hospital, and UPMC Pinnacle Obstetrics and Gynecology Specialists, acting through their actual and/or ostensible agents, servants, and/or employees, Plaintiff, Saheem Richard Gil, Jr. was born dead.

29. The acts and events set forth in the original complaint above constituted medical malpractice, the United States Government is liable for all damages caused by such acts, as provided by 28 U.S.C. §2679 et seq.

DAMAGES

30. Plaintiffs have suffered the following injuries for which they seek full compensation under the law:

- a. Wrongful death and survival action;
- b. Economic losses; and
- c. Negligent infliction of emotional distress.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs are entitled to damages from the United States, and they do hereby pray that judgment be entered in their favor and against the United States government as follows:

29. Costs of bringing this civil action and damages in the amount of \$10,000,000.

Plaintiffs further are entitled and do hereby seek recovery of all costs and attorney's fees incurred by Plaintiffs in this civil action, together with for such further and additional relief at law or in equity that this Court may deem appropriate or proper.



Respectfully submitted,
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May 14, 2021

U.S. District Court
Middle District of Pennsylvania
228 Walnut Street,
P.O. Box 983
Harrisburg, PA 17108

RE: Colon v. The United States of America, et al.

Dear Sir/Madam:

Please find enclosed two copies of a Complaint in the above captioned matter for filing in The United States District Court for the Middle District of Pennsylvania. Also enclosed is a check in the amount of \$402.00 for the filing and administrative fees.

Thank you for your attention in this matter.

Very truly yours,



Rhonda Hill Wilson

RHW/qsp
Enclosures